

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HOLOGIC, INC., AND CYTYC SURGICAL
PRODUCTS, LLC,

Plaintiffs,

v.

MINERVA SURGICAL, INC.,

Defendant.

C.A. No. 15-1031-JFB-SRF

[MINERVA'S PROPOSED] VERDICT FORM

INSTRUCTIONS: Please follow the directions provided throughout Verdict Form.

Your answer to each question must be unanimous. Please refer to the Jury Instructions for guidance on the law applicable to each question. Throughout this form, “Hologic” means Plaintiffs Hologic, Inc. and Cytoc Surgical Products, LLC and “Minerva” means Defendant Minerva Surgical, Inc.

I. HOLOGIC’S PATENT CLAIMS**A. PATENT INFRINGEMENT**

1. Do you find that Hologic has proven, by a preponderance of the evidence, that Minerva infringed—either literally or under the doctrine of equivalents—any of the following claims of the ’183 Patent?

You must answer YES or NO for every claim.

YES is a finding for Hologic. NO is a finding for Minerva.

U.S. Patent No. 6,872,183 (“the ’183 Patent”)		
CLAIM 7	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents
CLAIM 9	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents
CLAIM 11	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents
CLAIM 13	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents
CLAIM 14	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents

2. Do you find that Hologic has proven, by a preponderance of the evidence, that Minerva infringed—either literally or under the doctrine of equivalents—claim 1 of the '348 Patent?

YES is a finding for Hologic. NO is a finding for Minerva.

U.S. Patent No. 9,095,348 (“the ‘348 Patent”)		
CLAIM 1	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> Literal <u>or</u> <input type="checkbox"/> Doctrine of Equivalents

If you answered YES to at least one claim above, proceed to Questions 3-6. If you answered NO to all claims above, proceed to Question 5.

B. WILLFUL INFRINGEMENT

3. If you found that Minerva infringed at least one claim of the '183 Patent, do you find that Hologic has proven, by a preponderance of the evidence, that Minerva's infringement has been willful?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

4. If you found that Minerva infringed claim 1 of the '348 Patent, do you find that Hologic has proven, by a preponderance of the evidence, that Minerva's infringement has been willful?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

II. INVALIDITY—LACK OF WRITTEN DESCRIPTION

5. Do you find that Minerva has proven, by clear and convincing evidence, that any of the following claims of the '183 Patent is invalid for lack of written description?

You must answer YES or NO for every claim.

YES is a finding for Minerva. NO is a finding for Hologic.

U.S. Patent No. 6,872,183 ("the '183 Patent")		
CLAIM 7	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 9	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 11	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 13	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 14	<input type="checkbox"/> YES	<input type="checkbox"/> NO

6. Do you find that Minerva has proven, by clear and convincing evidence, that claim 1 of the '348 Patent is invalid for lack of written description?

YES is a finding for Minerva. NO is a finding for Hologic.

U.S. Patent No. 9,095,348 ("the '348 Patent")		
CLAIM 1	<input type="checkbox"/> YES	<input type="checkbox"/> NO

III. INVALIDITY—LACK OF ENABLEMENT

7. Do you find that Minerva has proven, by clear and convincing evidence, that any of the following claims of the '183 Patent is invalid for lack of enablement?

You must answer YES or NO for every claim.

YES is a finding for Minerva. NO is a finding for Hologic.

U.S. Patent No. 6,872,183 ("the '183 Patent")		
CLAIM 7	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 9	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 11	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 13	<input type="checkbox"/> YES	<input type="checkbox"/> NO
CLAIM 14	<input type="checkbox"/> YES	<input type="checkbox"/> NO

8. Do you find that Minerva has proven, by clear and convincing evidence, that claim 1 of the '348 Patent is invalid for lack of enablement?

YES is a finding for Minerva. NO is a finding for Hologic.

U.S. Patent No. 9,095,348 ("the '348 Patent")		
CLAIM 1	<input type="checkbox"/> YES	<input type="checkbox"/> NO

If you answered YES to at least one claim for Question 1 or Question 2, and answered NO to the same claim(s) in Questions 5-8, then proceed to Question 9.

Otherwise, proceed to Question 11.

IV. PATENT DAMAGES

9. If you found that Minerva infringed at least one claim of the '183 Patent and that the same claim(s) is not invalid, what damages do you find that Hologic has proved by a preponderance of evidence?

Damages for the '183 Patent: \$ _____

10. If you found that Minerva infringed claim 1 of the '348 Patent and that the same claim is not invalid, what damages do you find that Hologic has proved by a preponderance of evidence?

Damages for the '348 Patent: \$ _____

V. HOLOGIC'S FALSE ASSOCIATION CLAIMS (LANHAM ACT)¹

11. Adoption of the NovaSure Mark

- a. Did Hologic prove by a preponderance of the evidence that Minerva used the phrase “NovaSure 2.0” to designate Hologic as the source of the Minerva EAS?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

- b. Did Hologic prove by a preponderance of the evidence that Minerva used the phrase “the new NovaSure” to designate Hologic as the source of the Minerva EAS?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

- c. Did Hologic prove by a preponderance of the evidence that Minerva used the phrase “the makers of Novasure” to designate Hologic as the source of the Minerva EAS?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

¹ Although proposed herein, Minerva believes that Hologic has not put forward any competent evidence of harm for its non-patent claims, which not only defeats standing (as explained in Minerva's Motion for Summary Judgment, D.I. 277), and because Hologic is not seeking damages for its non-patent claims, they are strictly equitable in nature and should not be presented to the jury.

If your answer is “YES” to any of these questions you should proceed to Question 12.

If your answer is “NO,” your verdict is for Minerva regarding this claim, and you can proceed to Hologic’s Delaware Law Claims (i.e., Question 15).

12. Did Hologic prove by a preponderance of the evidence that Minerva’s use of the Novasure mark (which you identified in Question 11) actually misled customers or is likely to mislead a substantial portion of relevant customers in this market?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

If your answer is “YES” you should proceed to Question 13.

If your answer is “NO,” your verdict is for Minerva regarding this claim, and you can proceed to Hologic’s Delaware Law Claims (i.e., Question 15).

13. Did Hologic prove by a preponderance of the evidence that Minerva’s use of the NovaSure mark (which you identified in Question 11) resulted in a commercial injury to Hologic in the form of lost sales or loss of goodwill?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

If your answer is “YES” you should proceed to Question 14.

If your answer is “NO,” your verdict is for Minerva regarding this claim, and you can proceed to Hologic’s Delaware Law Claims (i.e., Question 15).

14. Did Hologic prove, by clear and convincing evidence, that Minerva's use of the NovaSure mark was intended to confuse customers as to the source of Minerva's EAS?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

VI. HOLOGIC'S DELAWARE LAW CLAIMS

15. Did Hologic prove by a preponderance of the evidence that Minerva engaged in deceptive trade practice against Hologic by disparaging the NovaSure product?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

If YES, what was the disparaging advertising/statement you find was used by Minerva:

16. Did Hologic prove by a preponderance of the evidence that Minerva engaged in unfair competition against Hologic?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

17. If you answered YES to Question 15 or 16, did Hologic prove by clear and convincing evidence that Minerva acted willfully?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

18. Did Hologic prove by a preponderance of the evidence that Minerva engaged in the tortious interference with a business relationship that Hologic had with a potential customer?

YES is a finding for Hologic. NO is a finding for Minerva.

☐ YES

☐ NO

VII. MINERVA'S FALSE ADVERTISING CLAIMS (LANHAM ACT)

19. Adoption of the NovaSure Mark

a. Did Minerva prove by a preponderance of the evidence that Hologic made false or misleading statements regarding the Minerva EAS (e.g., about the safety of the Minerva EAS)?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

b. Did Minerva prove by a preponderance of the evidence that Hologic made false or misleading statements regarding its NovaSure device (e.g., about the efficacy of NovaSure)?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

If your answer is "YES" to any of these questions you should proceed to Questions 20 and 21.

If your answer is "NO," your verdict is for Hologic regarding this claim, and you can proceed to Minerva's Delaware Law Claims (i.e., Question 25).

20. Did Minerva prove by a preponderance of the evidence that the advertising you identified in Question 19 is literally false?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

21. Did Minerva prove by a preponderance of the evidence that the advertising you identified in Question 19 actually misled customers or is likely to mislead a substantial portion of relevant customers in this market?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES ☐ NO

If your answer is "YES" to Question 20 or 21, you should proceed to Question 22.

If your answer is "NO" to Question 20 and 21, your verdict is for Hologic regarding this claim, and you can proceed to Minerva's Delaware Law Claims (i.e., Question 25).

22. Did Minerva prove by a preponderance of the evidence that the false advertising you identified in Question 19 resulted in a commercial injury to Minerva in the form of lost sales or loss of goodwill?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES ☐ NO

If your answer is "YES" you should proceed to Question 23.

If your answer is "NO" your verdict is for Hologic regarding this claim, and you can proceed to Minerva's Delaware Law Claims (i.e., Question 25).

23. Did Minerva prove by clear and convincing evidence that Hologic's false advertising was intentional?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES ☐ NO

24. False Advertising Damages

a. If you find that Hologic engaged in false advertising, what is the amount of damages (e.g., lost profits, harm to reputation, corrective advertising), if any, that you find Minerva proved by a preponderance of the evidence?

\$ _____

b. If you find that Hologic engaged in false advertising, what is the amount of profits, if any, that you find Hologic made from its false advertising?

\$ _____

VIII. MINERVA'S DELAWARE LAW CLAIMS

25. Did Minerva prove by a preponderance of the evidence that Hologic engaged in a deceptive trade practice against Minerva?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

If YES, what was the disparaging advertising/statement you find was used by Hologic:

26. Did Minerva prove by a preponderance of the evidence that Hologic engaged in unfair competition against Minerva?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

27. If you answered YES to Questions 25 or 26, did Minerva prove by clear and convincing evidence that Hologic acted intentionally or recklessly in engaging in unfair competition?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

28. Did Minerva prove by a preponderance of the evidence that Hologic engaged in the tortious interference with a business relationship that Minerva had with a potential customer?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

29. Did Minerva prove by a preponderance of the evidence that Hologic engaged in trade libel against Minerva?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

30. Did Minerva prove by a preponderance of the evidence that Hologic committed a breach of contract?

YES is a finding for Minerva. NO is a finding for Hologic.

☐ YES

☐ NO

31. If you answered YES to any of Questions 25, 26, 28, 29, or 30, what is the amount of damages Minerva proved by a preponderance of the evidence? This amount should exclude any damages you awarded to Minerva in Question 24 above.

\$ _____

32. If you answered YES to Question 27, and awarded compensable damage for Questions 25 or 26, what is the amount of punitive damages, if any, you have chosen award to Minerva?

\$ _____

You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations.

The Foreperson should sign and date the verdict form in the spaces below and notify the Court Security Officer that you have reached a verdict.

The Foreperson should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

DATED: _____

JURY FOREPERSON